

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1628

IN THE MATTER OF:

Application of SHAW ENTERPRISES,)	Served November 18, 1976
INC., T/A UNITED INN OF AMERICA)	
for Certificate of Public)	Application No. 964
Convenience and Necessity to)	
Perform Charter Operations)	Docket No. 359
Pursuant to Contract)	

By Application No. 964, filed August 31, 1976, Shaw Enterprises, Inc., trading as United Inn of America (Shaw) seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform charter operations pursuant to contract. Shaw seeks authority to transport persons who are out-patients of the National Institutes of Health (NIH), over irregular routes, between the United Inn of America, 8130 Wisconsin Avenue, Bethesda, Md., and the Clinical Center at the National Institutes of Health, located in Bethesda, Md.

The shuttle transportation service would be performed pursuant to a contract between Shaw and the NIH. The contract initially was for a period which commenced August 1, 1975 and terminated June 30, 1976, and has since been extended through September 30, 1977, with an option to renew, exercisable by NIH, for up to four additional years.

The primary purpose of this contract is to secure motel accommodations and subsistence (meals) for participants in NIH's special ambulatory care program. Services to be provided include a contiguous block of guest rooms, additional rooms when required, meals and snacks, all necessary labor, materials and equipment related thereto, daily maid service, swimming pool, recreation and laundry facilities, special holiday parties, and other services normally provided by hotels and motels.

Transportation services include (a) weekday (excluding holidays) shuttle service between the motel and NIH, basically between 7:30 A.M. and 5:30 P.M., (b) Saturday shopping trips by bus to local shopping centers, and (c) six field trips by bus each year to unspecified points. Transportation services are not billed separately and no per capita charges are involved.

The Compact, Title II, Article XII, Section 1(a) provides that "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service ..." with certain exceptions not here pertinent. Correspondingly, Section 2(a) of the same Article defines the term "carrier" as "... any person who engages in the transportation of passengers for hire by motor vehicle ..."

The Commission has not previously considered an application where transportation services constitute a part of an integrated contract primarily for the performance of non-transportation services, and it is not at all clear that the operations proposed by applicant constitute transportation "for hire" within the meaning of the Compact. The evidence now of record is insufficient to support a determination of this question which, if answered in the negative, would require dismissal of the application.

Title II, Article XII, Section 4(b) of the compact mandates that, whenever an application is made for a certificate of Public Convenience and Necessity, the Commission shall issue a certificate to any qualified applicant therefor, " ... if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied." Pursuant to this mandate, the Commission shall schedule a public hearing to develop an appropriate record. Shaw Enterprises, Inc., shall be assessed an

amount preliminarily estimated to be sufficient to cover the expenses which the Compact, Title II, Article XII, Section 19(a) requires the carrier to bear.

The Commission shall require Shaw Enterprises, Inc., to submit and be prepared to support with a competent witness a statement projecting revenues and revenue deductions in connection with its transportation service for a one year period. Applicant shall be directed to file six copies of the statement with the Commission and serve one copy on each party of record on or before Friday, December 10, 1976. Applicant shall be prepared to present evidence (a) concerning whether the proposed service is transportation "for hire" within the meaning of the Compact, and (b) if so, that the public convenience and necessity require the proposed service.

By letter filed August 31, 1976, applicant seeks temporary authority to perform the above-described shuttle service as required by its contract with NIH. The Commission may, in its discretion and without hearing or other proceedings, authorize a carrier to provide a service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need. See Compact, Title II, Article XII, Section 4(d)(3). For the limited purpose of considering temporary authority, the Commission will assume that applicant is a carrier subject to the Compact. The Commission finds that there is an immediate and urgent need for the transportation of persons who are participants in the Special Ambulatory Care Program of the National Institutes of Health, over irregular routes, between the United Inn of America, 8130 Wisconsin Avenue, Bethesda, Md., and the Clinical Center at the National Institutes of Health located in Bethesda, Md. The Commission also finds that there is no other carrier service capable of meeting such need, and accordingly shall grant applicant temporary authority to perform its contractual obligations. Of course, the grant of temporary authority creates no presumption that corresponding permanent authority will be granted. Moreover, in light of the circumstances of this proceeding, the grant of temporary authority should not be construed as any indication that applicant will be found to be a carrier of passengers for hire for any purpose other than issuance of temporary authority.

THEREFORE, IT IS ORDERED:

1. That Application No. 964 of Shaw Enterprises, Inc., trading as United Inn of America, be, and it is hereby, scheduled for public hearing to commence Monday, December 20, 1976, at 9:30 A. M., in the Hearing Room of the Commission, Room No. 314, 1625 I Street, N. W., Washington, D. C. 20006.

2. That Shaw Enterprises, Inc., publish once in a newspaper of general circulation in the Metropolitan District and post continuously until the hearing date in each of its vehicles notice of the application and hearing in the form prescribed by the staff of the Commission no later than Wednesday, November 24, 1976, and present at the hearing a certificate of publication from the selected newspaper and a certificate of posting.

3. That six copies, the original to be submitted at the hearing, of the statement required hereinbefore be filed by Shaw Enterprises, Inc., and one copy served on each party of record on or before Friday, December 10, 1976.

4. That any person desiring to protest shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard on this matter shall notify the Commission, in writing, on or before Wednesday, December 8, 1976, and shall mail a copy of such protest or such notice to Mr. Austin D. Shaw, President, Shaw Enterprises, Inc., United Inn of America, 8130 Wisconsin Avenue, Bethesda, Maryland 20014.

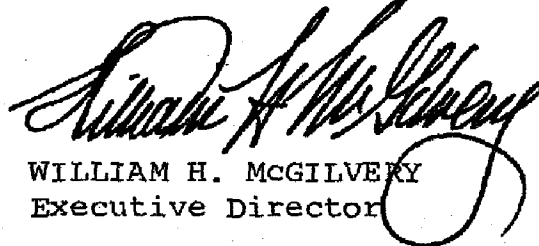
5. That Shaw Enterprises, Inc., Trading As United Inn of America, be, and it is hereby, granted temporary authority to transport persons who are participants in the Special Ambulatory Care Program of the National Institutes of Health, over irregular routes, between the United Inn of America, 8310 Wisconsin Avenue, Bethesda, Maryland, and the Clinical Center at the National Institutes of Health located in Bethesda, Md., in charter operations pursuant to contract with the National Institutes of Health.

6. That, unless otherwise provided by order of the Commission, the temporary authority granted herein shall become effective Thursday, November 18, 1976, and shall remain in effect through Tuesday, May 17, 1977.

7. That Shaw Enterprises, Inc., be, and it is hereby, required to file Temporary Authority Tariff No. 1 pursuant to the temporary authority granted herein to be effective November 18, 1976.

8. That Shaw Enterprises, Inc., be, and it is hereby, assessed \$300 pursuant to the provisions of the Compact, Title II, Article XII, Section 19(a), and directed to deliver said amount to the office of the Commission, Room 316, 1625 I Street, N. W., Washington, D. C. 20006, on or before Friday, December 10, 1976.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVER
Executive Director